

Rules of
Georgia Department of Community Affairs
Chapter 110-12-5
Mediation of Interjurisdictional Conflicts

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CHAPTER 110-12-5-.01
PURPOSE

110-12-5-.01 Purpose.

(1) **General.** The Georgia Planning Act calls on governments to mediate or otherwise resolve certain interjurisdictional conflicts. The Act authorizes the Department of Community Affairs (The Department) to establish procedures and guidelines for the mediation process and maintain a list of mediators to be made available to local governments and Regional Development Centers (RDCs).

(2) **Legislative Intent.** The legislature intended for mediation to be a means by which local governments can communicate with each other regarding comprehensive and solid waste management plans, plan implementation, or other actions that may potentially affect another local government. The Act views mediation as a less expensive and more constructive alternative to litigation, which too often is the only option available to a local government seeking to challenge another government's actions. The State has an interest in promoting effective and efficient comprehensive and solid waste planning, plan implementation, and communication between local governments regarding plans and their implementation. Mediation of conflicts is one method of making planning and plan implementation both effective and efficient.

(3) **Applicability.** The Rules provided herein are applicable to four types of intergovernmental conflicts subject to mediation under the Georgia Planning Act and the Comprehensive Solid Waste Management Act:

(a) Conflicts related to preparation or implementation of local, multi-jurisdictional and/or regional comprehensive plans.

(b) Conflicts related to preparation or implementation of local, multi-jurisdictional and/or regional solid waste management plans.

(c) Actions or conflicts related to regionally important resources.

(d) Actions or conflicts related to developments of regional impact.

CHAPTER 110-12-5-.02 DEFINITIONS

110-12-5-.02 Definitions.

(1) **General:** For the purpose of these rules, the following words shall have the meaning as contained herein unless the context does not permit such meaning. Terms not defined in these rules but defined in O.C.G.A. 50-8-1 et seq., shall have the meanings contained therein. Terms not defined in these rules, nor in O.C.G.A. 50-8-1 et seq., shall have ascribed to them the ordinary accepted meanings such as the context may imply.

(2) **Definitions:** The following terms and definitions shall be used to guide the mediation of interjurisdictional conflicts.

(a) 'Comprehensive Plan' means any plan by a county or municipality covering such county or municipality or any plan by a regional development center covering the center's region prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with Code Sections 50-8-7.1(b) and 50-8-7.2.

(b) 'Department' means Department of Community Affairs.

(c) 'Development of Regional Impact' means any project that requires local government action to proceed and that exceeds the minimum thresholds established by the Department. Such procedures and guidelines shall be as established by the Department pursuant to O.C.G.A. 50-8-7.1(b)(3).

(d) 'Interjurisdictional' means among two or more governments.

(e) 'Mediation' means the process to be employed by the department and regional development centers for resolving conflicts which may arise from time to time in the coordinated and comprehensive planning process.

(f) 'Minimum Planning Standards' means the minimum standards and procedures, including the minimum elements which shall be addressed and included for preparation of local comprehensive plans, for implementation of local comprehensive plans, and for participation in the coordinated and comprehensive planning process. Minimum planning standards may include any elements, standards and procedures for such purposes prescribed by a regional development center for counties and municipalities within its region and approved in advance by the department, in accordance with O.C.G.A. 50-8-35 and the rules and guidelines developed by the department.

(g) 'Petition for Mediation' means a petition filed with the regional development center of the local government whose plan or proposed action is the subject of the mediation, or with the Department if an RDC is a named party.

(h) 'Plan' means a comprehensive plan, solid waste management plan, or a full or partial update of said plan.

(i) 'Plan Amendment' means a revision of a plan that is officially adopted by the local government or RDC Board of Directors.

(j) 'Qualified Local Government' means a county or municipality that:

1. Adopts and maintains a comprehensive plan in conformity with the minimum standards and procedures;

2. Establishes regulations consistent with its comprehensive plan and with the minimum standards and procedures; and

3. Does not fail to participate in the Department's mediation or other means of resolving conflicts in a manner in which, in the judgment of the Department, reflects a good faith effort to resolve any conflict.

(k) 'Regional Development Center' means a regional development center (RDC) established under O.C.G.A. 50-8-32.

(l) 'Regionally Important Resource' means a natural or historic resource that has boundaries extending beyond a single local government's jurisdiction, has value to a broader public constituency and is vulnerable to the actions and activities of man. Procedures and guidelines to govern regionally important resources shall be as established by the Department pursuant to O.C.G.A. 50-8-7.1(b)(3).

(m) 'Comprehensive Solid Waste Management Plan' means any solid waste management plan by a county or municipality, any group of local jurisdictions agreeing to plan together, any local or regional solid waste authority, or any plan by a Regional Development Center on behalf of a member county or municipality, covering such county or municipality individually or in conjunction with other local governments prepared pursuant to the minimum standards and procedures for comprehensive solid waste management plans and for implementation of comprehensive solid waste management plans, established by the Department in accordance with O.C.G.A. 12-8-31.1.

CHAPTER 110-12-5-.03 DUTIES and RESPONSIBILITIES

110-12-5-.03 Duties and Responsibilities.

(1) **Local Governments.** Although mediation is a consensual, voluntary process, the Act encourages local government participation in the mediation process both because it provides a cost effective method to forestall interjurisdictional problems and because failure to participate in mediation or to mediate in good faith may result in loss of that government's qualified local government certification. Loss of this certification will result in a local government's ineligibility to receive certain state funds.

(2) Regional Development Centers.

(a) Review Responsibility. Regional Development Centers have the responsibility of reviewing local comprehensive and solid waste management plans for consistency with other plans within their region and reviewing local government action which may affect either Developments of Regional Impact (DRIs) or Regionally Important Resources (RIRs).

(b) Conflict Identification. RDCs are in a position to identify potential interjurisdictional conflicts at an early stage while performing their various review responsibilities. Under the Minimum Planning Standards, RDCs are required to notify local governments of any conflicts found in the review process. The RDCs are then encouraged to assist the local governments in resolving the conflict.

(c) Process Managers. Conflict resolution assistance will require each RDC to have personnel trained in mediation and other forms of conflict resolution. These personnel will be Process Managers, and will be the RDC contact for the local governments to assist them with informal conflict resolution and with administration of the formal mediation process, should it become necessary.

CHAPTER 110-12-5-.04 INFORMAL CONFLICT RESOLUTION

110-12-5-.04 Informal Conflict Resolution.

(1) General. Informal conflict resolution may be initiated at anytime by a local government, RDC, or DCA. It typically, but not necessarily, precedes formal mediation which is addressed in the following section.

(2) RDC Notification of Conflict. If during a review of a plan, plan amendment, DRI, or RIR, the RDC determines that a potential conflict exists between local governments, the RDC should bring the appropriate local governments together at the earliest possible time to determine whether a conflict actually exists, and, if so, attempt to informally resolve the matter in a mutually satisfactory manner.

(3) Time Limits. No time limit is placed on the duration of informal conflict resolution; however, upon the initiation of any form of informal conflict resolution, the initiating local government shall notify the appropriate RDC that informal conflict resolution has begun. During the time informal conflict resolution is taking place, the time limit for beginning formal mediation is temporarily suspended.

(4) Conclusion. Informal conflict resolution terminates either when the parties reach a successful conclusion, one or more of the parties withdraws, or one or more of the eligible parties requests formal mediation. Any party to the informal conflict resolution process is eligible to request the start of formal mediation at any time during the informal process, provided that informal conflict resolution was begun prior to the expiration of the time limit listed at 110-12-5-.05(4)(a)2. If the informal conflict resolution is unsuccessful, an eligible aggrieved party may petition for formal mediation within 14 calendar days after the date that the RDC Process Manager determines informal conflict resolution has concluded and notifies every party that participated in the informal conflict resolution of this determination.

CHAPTER 110-12-5-.05 FORMAL MEDIATION

110-12-5-.05 Formal Mediation.

(1) **General.** If the parties are unable to resolve their differences informally, formal mediation may be invoked by the procedures outlined below. Formal mediation is a process provided for in the Georgia Planning and Solid Waste Management Acts in which an impartial person, the mediator, who has no authority to make a decision for, or impose a settlement on, the parties, facilitates settlement discussions between the parties. Although any settlement reached by the parties is voluntary, failure to mediate in good faith may result in that party losing its qualified local government status.

(2) **Eligible Parties.** Only qualified local governments and RDCs are eligible to file a petition for formal mediation. In addition, with the approval of the parties to the mediation, a government that is not an original party to the mediation may enter the mediation.

(3) **Mediator Selection.** Once formal mediation is initiated, the process manager will assist the parties in identifying suitable mediators who could intercede promptly upon initiation of the formal 90-day mediation process. Since the parties' trust and confidence in a mediator are essential for the successful mediation of conflicts, the affected parties should be given every reasonable opportunity to jointly agree on the mediator. The parties may choose among a process manager from a different RDC, a professional mediator, or someone willing to serve as a volunteer mediator. To assist in the identification of a mediator, the Department will assemble and periodically update a listing of persons, and their qualifications, who have expressed an interest in serving as a mediator.

(4) Mediation Procedures.

(a) **Petition for Mediation.** A petition for mediation must be filed with the RDC of the local government whose plan or proposed action is the subject of the mediation, or with the Department if an RDC is a named party. Filing procedures are set forth below:

1. Except as may be otherwise provided herein, formal mediation cannot be initiated until after an RDC has completed its review of the plan, plan amendment, DRI, or action affecting an RIR, and has issued its findings and recommendations relating thereto.

2. A local government must file a petition for mediation within 20 calendar days of the completion of the RDC review or, in the event that an RDC review is not involved, within 20 calendar days from the date the petitioning government either becomes aware or should have become aware of the operative facts and circumstances giving rise to the petition for mediation. Minor amendments, changes, revisions, or subsequent action relating to plans, DRIs, or RIRs that do not materially alter or expand previously adopted plans or actions shall not give rise to a new period within which to request formal mediation. Failure to initiate formal mediation within the prescribed time will result in a waiver of any right to formally mediate such conflicts.

3. A uniform petition for mediation provided by the Department shall be used by a petitioning government. The petition shall be date-stamped by the RDC immediately upon receipt. The following must accompany the petition:

i. a certification that the petitioner has served a copy of the petition for mediation on the government with whom the formal mediation is being sought;

ii. a narrative statement of the facts underlying the conflict(s), including statements as to what injury has been or may be suffered by the petitioner and what steps, if any, have previously been taken to resolve the conflict(s);

iii. certification that the petitioner is a qualified local government;

iv. payment of a non-refundable filing fee of \$100 to the RDC.

4. Every petition for mediation must be signed by the chief elected official of the petitioning government. If the petition has not been officially sanctioned by the petitioner's governing body at the time of filing, such government must officially ratify the petition at its next meeting or the RDC shall dismiss the petition.

5. Upon receipt of a petition for mediation, an RDC shall have three working days to review the petition and determine whether it is appropriately filed. If the RDC determines that a petition is properly filed, it shall certify the petition. Once the petition is certified, the parties have 30 days to select a mediator. If at the end of 30 days, the parties have not decided on a mediator, the RDC will assign one from the Department's mediator list. The 90-day mediation time limit will not begin until either the parties agree on a mediator or the 30-day time limit has passed and the RDC has assigned a mediator. If the RDC determines that the petition has been improperly filed, it may either dismiss the petition or request that the petitioning government take remedial actions to correct any deficiencies. Such corrections must be made within five working days of the date of notification by the RDC of deficiencies in the petition.

(b) Appeal of Certification. Within two working days after certifying a petition for mediation, the RDC shall notify all potentially affected governments and agencies that the petition has been filed and indicate in the notice the nature of the petition. If a potentially affected local government believes that an RDC has either erroneously certified a petition or has erroneously dismissed a petition, that local government may appeal the decision to the Department. Such appeal must be in writing setting forth the factual basis of the alleged error, signed by the chief elected official of the appealing government, faxed or mailed to the Department, and received by the Department within five working days of the RDC's notification of potentially affected parties.

(c) Meetings. The chief elected official of each party to the mediation must be present at each mediation session. Failure of the official to attend will constitute bad faith on the part of that local government. Further, since mediation is in the nature of a pre-lawsuit settlement negotiation, meetings shall be closed to the public, and communications made as part of the actual mediation process shall be privileged.

(d) Enforcement. If the Board of Community Affairs determines that any party in the mediation process is not acting in good faith, that party will lose its qualified local government status until the Board determines that this government is acting in good faith; however, the period of loss of qualified local government status will not be less than six months (180 days).

(e) Costs. In addition to the above referenced filing fee, there will be various costs related to the mediation process, such as incidental travel, lodging, and meal costs, along with professional fees if a professional mediator is chosen. The petitioning government will be responsible for paying all incidental costs relating to a volunteer mediator's involvement. If the parties choose to engage a professional mediator, the parties must reach an agreement for the payment of the professional fees, with the petitioning government being responsible for the incidental costs.

(f) Reporting. The mediator, with the assistance of the process manager, shall file bi-weekly progress reports with the parties to the mediation, the RDC, the Department and any other involved parties. Such reports, which shall be public documents, will include a factual summary of the issues involved in the conflict and the procedures followed during the mediation. Within 10 days following the completion of the mediation, the mediator shall file a final report on the outcome of the mediation with the entities listed above.

(g) **Conclusion.** The formal mediation period is intended to last until an agreement is reached or 90 days, whichever occurs first. If mediation does not result in an agreement at the end of 90 days, the mediation period and process may be extended by the agreement of all parties to the mediation. If the mediation results in an agreement by the parties, the RDC shall monitor implementation of the agreement.

CHAPTER 110-12-5-.06

CONFLICTS BETWEEN PARTIES OTHER THAN LOCAL GOVERNMENTS

110-12-5-.06 Conflicts Between Parties Other Than Local Governments. Oversight of informal conflict resolution and formal mediation of conflicts between a local government and its RDC, or between two or more RDCs shall be the responsibility of the Department. Accordingly, parties to such conflicts should notify the Department of a potential conflict as early as possible, and a Department process manager will be responsible for bringing the parties together to attempt to resolve the conflict informally. The procedure for formal mediation shall be the same as above with the exception that the Department, rather than an RDC, shall coordinate and oversee the process, and the executive directors of the RDCs shall replace the local government chief elected officials in the process.